IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 2611 of 2006

Date of Decision:17th September, 2007

Balwinder Kaur

.... Petitioner

Versus

Rachan Singh and others.

... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. V.M. Gupta, Advocate,
for the petitioner.

Mr. Dharam Pal, Advocate,
for respondent No.1.

S.D. Anand, J.

The present revision petition filed by the petitioner impugns the validity of impugned order dated 08.12.2005 vide which the learned Additional District Judge, Rupnagar, hereinafter referred to as the learned Trial Judge, allowed a plea preferred by respondent-Gurmail Singh qua his exclusive entitlement to the amount under reference on the basis of Will dated 11.11.1994 which had been executed by Rachan Singh in his favour.

Facts in the first instance. Certain land belonging to Rachan Singh was acquired by the State. During the pendency of land reference No. 240 of 31.10.1996 titled Rachan Singh versus Punjab State, Rachan Singh land owner died. Respondent-Gumail Singh was not brought on record as legal representative during the pendency of that reference. However,

Gurmail Singh-respondent had already been impleaded as legal representative of deceased-Rachan Singh vide order dated 17.08.1996 in another matter. On disposal of land reference No. 240 of 31.10.1996, Gurmail Singh filed a plea for his being exclusively entitled to that amount on the basis of Will dated 11.11.1994. He is otherwise also a son of deceased-Rachan Singh.

That plea of his was contested by petitioner-Balwinder Kaur who, in the execution proceedings, also filed an application for the release of 50% of the share of compensation in her favour.

The Trial Court framed the following issues:-

"1. Whether Gurmel Singh is exclusively entitled to the disputed amount on the basis of Will? OPP.

2. Relief."

The learned Trial Court recorded a finding in favour of Gurmail Singh-respondent under issue No.1 by noticing that the impugned Will, apart from being a registered document, had been duly approved by its scribe Jawahar Lal and attesting witness Kesar Singh. A mutation had already been sanctioned in favour of Gurmail Singh. On the basis of that Will petitioner – Balwinder Kaur who is otherwise his sister, did not dispute that Will at the time of sanction of the mutation. She also put in appearance in the course of the proceedings of execution No. 82/9.6.96 in the Court of the then Additional District Judge, Ropar, and admitted the factum of Will dated 11.11.1994 and made a statement that she had no objection in the compensation being paid to Gurmail Singh. Bachan Singh, a brother of Balwinder Kaur and Gurmail Singh, also made a statement in that execution application to that effect. It was vide order dated 04.05.1996 that the then

Additional District Judge, Ropar ordered the release of the entire compensation amount in his favour.

I have heard the learned counsel for the parties and carefully gone through the file.

The learned counsel for the petitioner argued that the controversy about the legal representatives of deceased Rachan Singh could not have been gone into by the learned Trial Court in the course of the execution proceedings and the only way to determine entitlement to the compensation amount was to resort to the proceedings for obtaining a succession certificate.

The learned counsel for the respondent, on the other hand, argued that the locus-standi of Gurmail Singh as legal representative of Rachan Singh had been decided in another matter and the finding in that case had not been challenged till date. It was also argued that the petitioner – Balwinder Kaur having admitted the factum/validity of the Will dated 11.11.1994 in favour of Gurmail Singh cannot be heard to grudge his locus-standi in the present proceedings, particularly when she had made a statement in the earlier case that she has no objection to the payment of compensation to Gurmail Singh.

I find force in the plea on behalf of the respondents. As noticed by the learned Trial Court in para 9 of the impugned order, there were certain other proceedings in execution No. 18 dated 09.06.1996, between the parties which were pending in the Court of the then Additional District Judge, Ropar and it was on 20.09.1996 that petitioner – Balwinder Kaur made a statement conceding the execution of Will by Rachan Singh in favour of her brother Gurmail Singh on 11.11.1994. Ex. A3 is a copy of her

statement to the above effect. Bachan Singh, a brother of Balwinder Kaur and Gurmail Singh, had also made a statement to the above effect only in that matter. On the basis of the statements made by Balwinder Kaur and Bachan Singh, the then learned Additional District Judge, Ropar, vide order dated 04.05.1996, declared that Gurmail Singh-respondent would be the only legal heir of Rachan Singh. It is not even the averment on behalf of the petitioner that the aforesaid finding had been challenged in any appropriate forum or that finding had been set aside by any competent court of law. In that view of things, the petitioner cannot wriggle out of the admission made by her in the previous proceedings regarding respondent-Gurmail Singh being the sole legal heir of deceased Rachan Singh. It is, thus, not compulsive for respondent to go in for a succession certificate.

I have, thus, no hesitation in affirming the finding recorded by the learned Trial Court. The petition is held to be devoid of merit and is ordered to be dismissed.

September 17, 2007 (S.D. Anand)
vkd Judge

Note : Whether referred to reporter or not : Yes/No